

- Government agencies are to provide necessary services for homeless or street children.
- A wide range of recreational facilities and services of interest to young persons should be established and made easily accessible.

Mass media

- The mass media should ensure that young persons have access to information from a diversity of national and international sources.
- It should portray the positive contributions of young people to society.
- Information on services, facilities and opportunities for young persons should be disseminated.
- Mass media in general, and film and television in particular, should minimize the portrayal of pornography, drugs and violence, display violence and exploitation unfavourably, avoid demeaning and degrading presentations, especially of children, women and interpersonal relations, and promote egalitarian principles and roles.
- The mass media should use its power for drug abuse prevention by relaying consistent messages through a balanced approach and by promoting effective drug awareness campaigns.

SOCIAL POLICY

- Government agencies should give high priority to plans and programmes for young persons and provide sufficient funds and resources for adequate medical and mental health care, nutrition, housing, and substance abuse prevention.
- Institutionalization of young persons should be a measure of last resort and for the minimum necessary period. Criteria for intervention of this sort should be strictly defined and limited to situations where the child or young person: a) has suffered harm inflicted by parents or guardians; b) has been sexually or physically abused; c) has been neglected, abandoned or exploited by the parents or guardians; d) is threatened by physical or moral danger due to the behaviour of parents; and e) is in jeopardy of serious physical or psychological danger manifested in his or her own behaviour and

neither the parents or guardians nor the juvenile himself or herself can meet the danger by means other than institutionalization.

‣ Government agencies should provide young persons with the opportunity of continuing in full-time education, funded by the State where the parents or guardians are unable to support the young persons, and of receiving work experience.

‣ Programmes to prevent delinquency should be planned and developed on the basis of scientific research and periodically monitored, evaluated and adjusted.

‣ Scientific information should be disseminated to professionals and the public at large about the sort of behaviour or situation which indicates or may result in victimization or abuse of young persons.

‣ Generally, participation of young persons in programmes should be voluntary, and young persons should be involved in formulation and implementation of youth programmes.

‣ Governments should take measures to prevent domestic violence against young persons and ensure fair treatment for victims.

LEGISLATION AND JUVENILE JUSTICE ADMINISTRATION

‣ Specific laws and procedures should be enacted to protect the rights and well-being of all young persons, including legislation against the victimization, abuse, exploitation and use for criminal activity of children and young persons.

‣ No child or young person should be subjected to harsh or degrading correction measures or punishment at home, in schools or in any other institution.

‣ Legislation and enforcement should restrict and control accessibility of weapons to children and young persons.

‣ Any conduct not considered an offence or penalized if committed by an adult should not be considered an offence or penalized if committed by a young person.

‣ Consideration should be given to establishing an office of ombudsman or similar independent organ, to ensure that the status, rights and interests of young persons are upheld and proper referral to available services is made.

‣ Law enforcement personnel and other relevant personnel, of both sexes, should be trained to respond to the special needs of young

persons and be made familiar with programmes and referral possibilities for the diversion of young persons from the justice system.

‣ Legislation should protect children and young persons from drug abuse and drug traffickers.

RESEARCH, POLICY DEVELOPMENT AND COORDINATION

‣ Multidisciplinary and interdisciplinary efforts should be made to promote interaction between economic, social, educational and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.

‣ Exchange of information and experience and technical and scientific cooperation in practical and policy-related matters should be intensified at the national, regional and international levels and within the United Nations system.

‣ The United Nations Secretariat should play an active role in research, formulation of policy options and review of practical implementation and as a source of reliable information.

RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY

*Adopted by the General Assembly as resolution 45/113
on the recommendation of the Eighth Congress*

FUNDAMENTAL PERSPECTIVES

‣ The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles.

‣ Imprisonment should be used as a last resort, should be in accord with the principles and procedures in these Rules and in the Standard Minimum Rules for the Administration of Juvenile Justice, and should be for the minimum necessary period. The length of the sanction should be determined by judicial authority, without precluding the possibility of early release.

‣ The Rules are designed to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty and serve as convenient standards of reference to

professionals involved in the juvenile justice system. They should be made available to juvenile justice personnel in their national languages. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles.

‣ Competent authorities should seek to increase the awareness of the public that care of detained juveniles and preparation for their return to society is a social service of great importance. To this end, contacts between the juveniles and the local community should be fostered.

SCOPE AND APPLICATION OF THE RULES

‣ The following definitions apply:

a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of liberty is to be determined by law.

b) The deprivation of liberty means any form of detention or imprisonment or placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, ordered by any judicial, administrative or public authority.

‣ Deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Detained juveniles should be guaranteed meaningful activities and programmes which promote health and self-respect, foster their sense of responsibility and encourage their development as potential members of society.

‣ Detained juveniles are not to be denied for any reasons related to their status civil, economic, political, social or cultural rights to which they are entitled under national or international law and which are compatible with the deprivation of their liberty, such as social security benefits, freedom of association and, upon reaching the minimum age established by law, the right to marry.

‣ Protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by regular inspections and other con-

trols carried out according to international standards and national laws and regulations by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

- ▶ The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty.
- ▶ The Rules are to be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

JUVENILES UNDER ARREST OR AWAITING TRIAL

▶ Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided and limited to exceptional circumstances. All efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

▶ The conditions under which an untried juvenile is detained should include, but not necessarily be limited to, the following:

- a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly and confidentially with their legal advisers.
- b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of detention.
- c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

THE MANAGEMENT OF JUVENILE FACILITIES

Records

- ▶ All reports, including legal records, medical records, records of disciplinary proceedings and all other documents relating to the

form, content and details of treatment, should be placed in a confidential individual file. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file. In order to exercise this right, there should be procedures that allow an appropriate third party to consult the file on request. Upon release, the records of juveniles shall be sealed and, at an appropriate time, expunged.

► No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. No juvenile should be detained in any facility where there is no such register.

Admission, registration, movement and transfer

► In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile:

- a) Information on the identity of the juvenile;
- b) The fact of and reasons for commitment and the authority thereof;
- c) The day and hour of admission, transfer and release;
- d) Details of the notifications to parents and guardians on every admission, transfer or release of the juveniles in their care at the time of commitment;
- e) Details of known physical and mental health problems, including drug and alcohol abuse.

► The above-mentioned information should be provided without delay to the parents and guardians or closest relative of the juvenile.

► On admission, juveniles will be given a copy of rules governing the facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints and the address of agencies which provide legal assistance. For those who are illiterate or cannot understand the language in the written form, the information shall be conveyed in a comprehensible manner.

Classification and placement

► As soon as possible after admission, each juvenile should be interviewed and a psychological and social report identifying factors

relevant to the care and programme required by the juvenile should be prepared. This report, together with that of a medical officer who has examined the juvenile upon admission, should be forwarded to the director for the purpose of determining the most appropriate placement of the juvenile within the facility. When special rehabilitative treatment is required, and the length of the stay permits, trained personnel should prepare a written, individualized treatment plan specifying objectives, time-frame, means, stages and potential delays.

- ▶ Detention of juveniles should take place only under conditions taking account of their particular needs, status, age, personality, sex and type of offence, to ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles should be the type of care best suited to individual needs.

- ▶ In all detention facilities, juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme shown to be beneficial for the juveniles concerned.

- ▶ Open detention facilities—those with no or minimal security measures—for juveniles should be established. The population in such facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities should be decentralized and of such size as to facilitate contact with families. Small-scale facilities should be established and integrated into the social, economic and cultural environment of the community.

Physical environment and accommodation

- ▶ Juveniles deprived of their liberty shall have the right to facilities and services meeting all requirements of health and human dignity.

- ▶ Design of facilities should be in keeping with the rehabilitative aim, with due regard for privacy, sensory stimuli, opportunities for association between peers, sports and physical exercise and leisure activities. Risk of fire should be minimized and safe evacuation ensured. Facilities should not be located where there are known health or other hazards.

‣ Sleeping accommodation should consist of small group dormitories or individual bedrooms, while bearing in mind local standards. During sleeping hours, there should be regular, unobtrusive supervision. Every juvenile should, in accord with local or national standards, be provided with separate and sufficient bedding, clean when issued and changed often enough to ensure cleanliness.

‣ Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply with physical needs in privacy and in a clean and decent manner.

‣ The possession of personal effects is a basic element of the right to privacy and essential to psychological well-being. The right to possess and store personal effects is to be fully respected. Those effects the juvenile does not choose to retain or that are confiscated should be placed in safe custody, and an inventory thereof signed by the juvenile. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of medicine, the medical officer is to decide what use to make of it.

‣ To the extent possible, juveniles should have the right to use their own clothing. Facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which in no manner shall be degrading or humiliating. Juveniles removed from or leaving a facility should be allowed to wear their own clothing.

‣ Every detention facility shall ensure suitably prepared food presented at normal mealtimes and of a quality and quantity to meet dietary, hygienic and health standards and, as far as possible, religious or cultural requirements. Clean drinking water is to be available at any time.

Education, vocational training and work

‣ Every juvenile of compulsory school age has the right to education suited to his or her needs and designed to prepare him or her for return to society. Such education should be provided outside the facility in community schools wherever possible. Special attention should be given to the education of juveniles of foreign origin or

with particular cultural or ethnic needs and those who are illiterate or have cognitive difficulties have a right to special education.

- Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so.

- Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

- Every facility should provide access to a library adequately stocked with instructional and recreational books.

- Every juvenile has the right to receive vocational training.

- With due regard to proper vocational selection and the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

- All protective national and international standards applicable to child labour should apply to juveniles deprived of their liberty.

- Wherever possible, juveniles should be provided with opportunities to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community.

- Every juvenile who performs work has the right to equitable remuneration. Interests of juveniles and their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of the juvenile normally should be set aside for a savings fund to be handed over at release. The juvenile has the right to the remainder, to purchase personal articles, indemnify the victim of his or her offence or send to his or her family or other persons outside the detention facility.

Recreation

- Every juvenile has the right to a suitable amount of time for daily free exercise, in the open air when weather permits, during which recreational and physical training normally should be provided. Adequate space, installations and equipment are to be provided. There should be additional time for daily leisure activities, including arts and crafts skill development if the juvenile so wishes. Remedial phys-

ical education and therapy under medical supervision should be offered to juveniles needing it.

Religion

▶ Every juvenile is to be allowed to satisfy the needs of his or her religious or spiritual life, by attending services in the facility or by conducting his or her own services and having possession of necessary books or items of religious observance and instruction. If a facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed to hold regular services and pay pastoral visits. Every juvenile has the right to visits from qualified representatives of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

Medical care

▶ Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All care should, where possible, be provided to detained juveniles through the appropriate facilities of the community in which the detention facility is located, to prevent stigmatization and promote integration into the community.

▶ Every juvenile has a right to examination by a physician immediately upon admission to a detention facility, for the purpose of recording evidence of prior ill-treatment and identifying any physical or mental condition requiring treatment.

▶ The medical service should seek to detect and treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every facility should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and to staff trained in preventive care and emergency treatment. Every juvenile who complains of or demonstrates symptoms of physical or mental difficulties should be examined promptly by a medical officer.

- Any medical officer who believes the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the facility and to the independent authority responsible for safeguarding the well-being of the juvenile.
- A juvenile suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken to continue mental health care after release.
- Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel and adapted to the age, sex and other requirements of the juveniles concerned. Detoxification facilities and services staffed by trained personnel should be available.
- Medicines should be administered only for necessary treatment and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered to elicit information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testees in the experimental use of drugs and treatment. Administration of any drug should always be authorized and carried out by qualified medical personnel.

Notification of illness, injury and death

- The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. Any parent, guardian or designated person shall be notified immediately in case of death, illness requiring transfer to an outside medical facility or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should be given to the consular authorities of the State of which a foreign juvenile is a citizen.
- Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative has the right to inspect the death certificate, see the body and determine the method of its disposal. There should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death occurs within six months

of the date of the juvenile's release and there is reason to believe that the death is related to the period of detention.

‡ A juvenile should be informed at the earliest possible time of the death or serious illness or injury of any immediate family member and have the opportunity to attend the funeral or go to the bedside of a critically ill relative.

Contacts with the wider community

‡ Juveniles should have adequate communication with the outside world, which is part of fair and humane treatment and essential to preparation for return to society. Communication should be allowed with families, friends and other persons or representatives of reputable outside organizations. Juveniles should be allowed to leave the facility for a visit to home and family and should receive special permission to leave for educational or vocational reasons. Should the juvenile be serving a sentence, time spent outside a facility should be counted as part of the period of sentence.

‡ Every juvenile has the right to receive regular and frequent visits, in principle once a week and not less than once a month, in privacy and with unrestricted communication with family and the defence counsel.

‡ Every juvenile has the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted in enjoying this right. Every juvenile has the right to receive correspondence.

‡ Juveniles have the right to keep informed of the news through newspapers and periodicals, access to radio, television and motion pictures, and visits of the representatives of any lawful club or organization.

Limitations of physical restraint and the use of force

‡ Recourse to instruments of restraint and to force should be prohibited, except as set forth below.

‡ Instruments of restraint and force can be used only in exceptional cases, where all other control methods have failed, and only as authorized by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible time. By order of the director of the adminis-

tration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should consult medical and other relevant personnel at once and report to the higher administrative authority.

▶ The carrying and use of weapons by personnel should be prohibited in any facilities where juveniles are detained.

Disciplinary procedures

▶ Disciplinary measures should promote safety and an ordered community and should be consistent with upholding the dignity of the juvenile and instilling a sense of justice, self-respect and respect for the rights of others.

▶ All cruel, inhumane or degrading disciplinary measures shall be strictly prohibited, including corporal punishment, placement in a dark cell and solitary confinement. Reduction of diet and denial of contact with family members should be prohibited. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile and should not be imposed as a disciplinary measure. No juvenile should be sanctioned more than once for the same infraction. Collective sanctions should be prohibited.

▶ Legislation or regulations should be established concerning the following:

- a) Conduct constituting a disciplinary offence;
- b) Type and duration of disciplinary sanctions that may be inflicted;
- c) The authority competent to impose such sanctions;
- d) The authority competent to consider appeals.

▶ A report of misconduct should be presented promptly to the proper authority, and decided on without undue delay. A thorough examination of the case should be conducted.

▶ No juvenile should be sanctioned except in accord with the law and regulations in force. No juvenile should be sanctioned without being informed of the alleged infraction and given a proper opportunity to present a defence, including right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

- ▶ No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

Inspection and complaints

- ▶ Qualified inspectors or an equivalent authority not belonging to the administration of the facility should conduct inspections on a regular basis and undertake unannounced inspections on their own initiative and should enjoy full guarantees of independence. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty and to all juveniles and all records of such facilities.
- ▶ Qualified medical officers attached to the inspecting authority or the public health service should participate in inspections, evaluating compliance with rules concerning physical environment, hygiene, accommodation, food, exercise and medical services. Every juvenile has the right to talk in confidence to any inspecting officer.
- ▶ After completing the inspection, the inspector should submit a report including an evaluation of compliance with the present Rules and relevant national law and recommendations for ensuring compliance. Any facts indicating violation of legal provisions should be communicated to competent authorities for investigation and prosecution.
- ▶ Every juvenile should be able to make requests or complaints to the director of the facility or his or her authorized representative, or to the central administration, the judicial authority or other proper authorities through the proper channels, without censorship as to substance, and should be informed of the response without delay.
- ▶ Efforts should be made to establish an independent office (ombudsman) to investigate complaints made by juveniles deprived of their liberty and achieve equitable settlements.
- ▶ Juveniles have the right to request assistance from family members, legal counsellors, humanitarian groups or others to make a complaint. Illiterate juveniles should be assisted if they need to use the services of agencies providing legal counsel or which are competent to receive complaints.

Return to the community

- ▶ Procedures, including early release, should be designed to assist juveniles returning to society, family life, education or employment after release.
- ▶ Services to assist juveniles in re-establishing themselves in society should ensure, to the extent possible, suitable residence, employment, clothing and sufficient means. Representatives of agencies providing such services should be consulted and should have access to juveniles while detained.

PERSONNEL

- ▶ Personnel should be qualified and include a sufficient number of educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists, normally employed on a full-time basis, but not excluding part-time or volunteer workers as appropriate.
- ▶ The administration should carefully select and recruit every grade and type of personnel, provide adequate remuneration and encourage conduct that will deserve and gain the respect of juveniles.
- ▶ Organization and management should facilitate communications between different categories of staff and between staff and administration.
- ▶ Personnel are to be trained in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules, and to receive in-service training in professional skills.
- ▶ The director of a facility should be qualified by administrative ability, suitable training and experience and should work full-time.
- ▶ Personnel should respect and protect human dignity and fundamental rights. In particular:
 - a) No staff member may inflict, instigate or tolerate any act of torture or any harsh, cruel, inhuman or degrading treatment under any pretext;
 - b) All personnel should rigorously oppose corruption and report incidents without delay to the competent authorities;
 - c) All personnel should respect the present Rules and report any serious violation;

- d) All personnel should ensure full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation;
- e) All personnel should respect the right of the juvenile to privacy, and should safeguard all confidential matters concerning juveniles and their families learned as a result of their professional capacity;
- f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect to the dignity of juveniles as human beings.

BASIC PRINCIPLES ON THE USE OF FORCE AND FIREARMS BY LAW ENFORCEMENT OFFICIALS

Adopted by the Eighth Crime Congress, Havana, 27 August-7 September 1990

General provisions

- ▶ Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials and keep associated ethical issues constantly under review.
- ▶ Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition allowing for differentiated use of force and firearms, to include non-lethal incapacitating weapons, with a view to increasingly restraining applications of means causing death or injury.
- ▶ Development and deployment of non-lethal incapacitating weapons should be carefully evaluated to minimize the risk of endangering uninvolved persons, and use should be carefully controlled.
- ▶ In carrying out their duty, law enforcement officials shall as far as possible apply non-violent means before resorting to force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

› Whenever lawful use of force and firearms is unavoidable, law enforcement officials shall:

a) Exercise restraint and act in proportion to the seriousness of the offence and the legitimate objective;

b) Minimize damage and injury, and respect and preserve human life;

c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;

d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest moment.

› Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superior.

› Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

› Exceptional circumstances, such as internal political instability or any other public emergency, may not be invoked to justify any departure from these basic principles.

Special provisions

› Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives.

› In the circumstances provided for under the above principle, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

› Rules and regulations should include guidelines that:

- a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
- b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- c) Prohibit the use of firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Policing unlawful assemblies

- 1) As everyone is allowed to participate in lawful and peaceful assemblies, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accord with the following two principles:
 - a) In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict force used to the minimum necessary;
 - b) In the dispersal of violent assemblies, firearms may be used only when less dangerous means are not practicable and only to the minimum extent necessary.

Policing persons in custody or detention

- 1) Law enforcement officials shall not use force in relations with persons in custody or detention except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.
- 2) They shall not use firearms in such relations except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention who presents an imminent threat.

Qualifications, training and counselling

- ▶ All law enforcement officials are to be selected by proper screening procedures, have appropriate moral, psychological and physical qualities for effective exercise of their functions and receive continuous professional training. Their continued fitness to perform should be subject to periodic review.
- ▶ Law enforcement officials are to be trained and tested in accord with appropriate proficiency standards in the use of force. Those required to carry firearms should be authorized to do so only upon completion of special training in their use.
- ▶ Questions of police ethics and human rights shall be given special attention in the training of law enforcement officials, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and methods of persuasion, negotiation and mediation. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.
- ▶ Stress counselling should be made available to law enforcement officials who are involved in situations where force and firearms are used.

Reporting and review procedures

- ▶ Effective reporting and review procedures are to be established for all incidents where use of force or firearms causes injury or death or when firearms are used in the performance of law enforcement. An effective review process is to be available and independent administrative or prosecutorial authorities are to be in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities.
- ▶ Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants.
- ▶ Superior officers are to be held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

- No criminal or disciplinary sanction is to be imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force or firearms, or who report such use by other officials.
- Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

BASIC PRINCIPLES ON THE ROLE OF LAWYERS

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Access to lawyers and legal services

- All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and defend them in all stages of criminal proceedings.
- Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction or discrimination of any kind.
- Governments shall ensure sufficient funding and other resources for legal services to the poor and, as necessary, other disadvantaged persons. Professional associations of lawyers shall cooperate to this end.
- Programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting fundamental freedoms are to be promoted. Special attention should be given to the poor and disadvantaged to enable them to assert their rights and where necessary call upon the assistance of lawyers.

Special safeguards in criminal justice matters

- ‡ All persons are to be informed immediately by a competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
- ‡ All persons are entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them without payment if they lack sufficient means.
- ‡ All persons arrested or detained shall have prompt access to a lawyer, and in any case within 48 hours.
- ‡ All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within hearing, of law enforcement officials.

Qualifications and training

- ‡ Lawyers are to have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.
- ‡ There is to be no discrimination of any kind against a person with respect to entry into or continued practice within the legal profession, except that a requirement that a lawyer must be a national of the country concerned shall not be considered discriminatory.
- ‡ In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, special measures should be taken to provide opportunities for candidates from these groups to enter the legal profession and receive training appropriate to the needs of their groups.

Duties and responsibilities

- ‡ Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.
- ‡ The duties of lawyers towards their clients shall include:

- a) Advising clients as to their legal rights and obligations, and to the working of the legal system in so far as it is relevant to the rights and obligations of their clients;
- b) Assisting clients in every appropriate way, and taking legal action to protect their interests;
- c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.
- › Lawyers shall seek to uphold human rights and fundamental freedoms recognized by national and international law and at all times act freely and diligently in accord with the law and recognized standards of the legal profession.
- › Lawyers shall always loyally respect the interests of their clients.

Guarantees for the functioning of lawyers

- › Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.
- › Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.
- › No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accord with national law and practice.
- › Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.
- › It is the duty of the competent authorities to ensure that lawyers have access to appropriate information, files and documents in their possession or control in time to enable lawyers to provide effective legal assistance to their clients and at the earliest appropriate time.
- › Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

Freedom of expression and association

- › Lawyers, like other citizens, are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the

right to take part in public discussion of matters concerning the law and human rights and to join or form local, national or international organizations and attend meetings, without suffering professional restrictions. In exercising these rights, lawyers shall always conduct themselves in accord with the law and recognized standards of the profession.

Professional associations of lawyers

- ▶ Lawyers are entitled to form and join self-governing professional associations to represent their interests, promote continuing education and training and protect professional integrity. The executive body of the professional associations shall be elected by its members and exercise its functions without external interference.
- ▶ Professional associations of lawyers shall cooperate with Governments to ensure effective and equal access to legal services for all and that lawyers are able, without improper interference, to counsel and assist their clients.

Disciplinary proceedings

- ▶ Codes of professional conduct are to be established by the legal profession through appropriate organs, or by legislation, in accord with national law and custom and recognized international standards and norms.
- ▶ Charges or complaints made against lawyers in their professional capacities shall be processed expeditiously and fairly under appropriate procedures. Lawyers have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.
- ▶ Disciplinary proceedings shall be determined in accord with the code of professional conduct and other recognized standards and ethics of the legal profession.

GUIDELINES ON THE ROLE OF PROSECUTORS

Adopted by the Eighth Crime Congress, Havana, 27 August-7 September 1990

Qualifications, selection and training

- ▶ Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications.
- ▶ States shall ensure that:
 - a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice of any kind, save that it shall not be considered discriminatory to require a candidate to be a national of the country concerned;
 - b) Prosecutors have appropriate education and training and are aware of the ideals and duties of their office, of constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.

Status and conditions of service

- ▶ Prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession.
- ▶ States shall ensure that prosecutors can perform professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.
- ▶ Prosecutors and their families shall be physically protected by the authorities when personal safety is threatened due to discharge of professional functions.
- ▶ Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations.
- ▶ Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, such as ability, integrity and experience, and decided through fair and impartial procedures.

Freedom of expression and association

- ▶ Prosecutors, like other citizens, are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the

law and human rights and to join or form local, national or international organizations and attend meetings, without suffering professional restrictions. In exercising these rights, prosecutors shall always conduct themselves in accord with the law and recognized standards of the profession.

► Prosecutors are to be free to form and join professional associations or other organizations to represent their interests, promote professional training and protect their status.

Role in criminal proceedings

► The office of prosecutors shall be strictly separated from judicial proceedings.

► Prosecutors are to take an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.

► Prosecutors shall perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and human rights.

► In the performance of their duties, prosecutors shall:

a) Carry out their functions impartially and avoid all kinds of discrimination;

b) Protect the public interest, act with objectivity, take account of the position of the suspect and the victim and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;

c) Keep matters in their possession confidential, unless performance of duty or needs of justice require otherwise;

d) Consider the views and concerns of victims and ensure they are informed of their rights in accord with the Declaration of Basic Principles of Justice for Victims of Abuse of Power.

► Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

► When prosecutors come into possession of evidence against suspects that they know or believe to be obtained through recourse

to unlawful methods, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the court accordingly, and shall take all necessary steps to ensure that those responsible are brought to justice.

Discretionary functions

▶ In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency in taking decisions, including institution or waiver of prosecution.

Alternatives to prosecution

▶ In accord with national law, prosecutors should consider waiving prosecution, discontinuing proceedings conditionally or unconditionally or diverting criminal cases from the formal justice system, with full respect for the rights of suspect and victim. States should fully explore the possibility of adopting diversion schemes.

▶ In countries where prosecutors are vested with discretion in deciding whether or not to prosecute a juvenile, special consideration should be given to the nature and gravity of the offence, protection of society and the personality and background of the juvenile. They shall particularly consider available alternatives to prosecution, and take prosecutory action only to the extent strictly necessary.

Relations with other government agencies or institutions

▶ To ensure fairness and effectiveness, prosecutors shall cooperate with the police, the courts, the legal profession, public defenders and other government agencies or institutions.

Disciplinary proceedings

▶ Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints which allege that prosecutors acted in a manner out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors have the right to a fair hearing. The decision is to be subject to independent review.

- Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision and be determined in accord with the law, the code of professional conduct and other established standards and in the light of the present Guidelines.

Observance of the Guidelines

- Prosecutors shall respect the present Guidelines and to the best of their capability prevent and oppose any violations thereof.
- Prosecutors with reason to believe a violation of the Guidelines has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities vested with reviewing or remedial power.

MODEL TREATY ON EXTRADITION

Adopted by the Eighth Crime Congress, Havana, 27 August-7 September 1990

ARTICLE 1

Obligation to extradite

Each Party agrees to extradite to the other any person who is wanted in the requesting State for prosecution for an extraditable offence or for the imposition or enforcement of a sentence in respect of such an offence.

ARTICLE 2

Extraditable offences

1. Extraditable offences are those punishable under the laws of both Parties by imprisonment or deprivation of liberty for a maximum period of at least [one/two] year(s), or by a more severe penalty. Where request for extradition relates to a person wanted for enforcement of a sentence, extradition shall be granted only if a period of at least [four/six] months remains to be served.
2. In determining whether or an offence is punishable under the laws of both Parties, it shall not matter whether:

a) The laws of both Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;

b) Under the laws of the Parties the constituent elements of the offence differ, it is the totality of the acts or omissions that shall be taken into account.

3. Where extradition is sought for an offence against a law relating to taxation, customs duties or other revenue matters, extradition may not be refused on the ground that the law of the requesting State does not impose the same kind of tax or duty.

4. If the request for extradition includes several separate offences each of which is punishable under the laws of both Parties, but some of which do not fulfil other conditions set out in paragraph 1 of this article, the requested Party may grant extradition for the latter offences provided the persons is to be extradited for at least one extraditable offence.

ARTICLE 3

Mandatory grounds for refusal

Extradition shall not be granted in any of the following circumstances:

a) If the offence for which extradition is requested is regarded as a political offence;

b) If there are grounds to believe the request has been made to prosecute or punish a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status, or that the person's position may be prejudiced for any of these reasons;

c) If the offence is an offence under military law and not also an offence under criminal law;

d) If final judgement has been rendered against the person in the requested State in respect of the offence for which the persons' extradition is requested;

e) If the person whose extradition has been requested has, under the law of either Party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;

f) If the person would be subjected to torture or cruel, inhuman treatment or degrading punishment or if that person has not or would not receive the minimum guarantees in criminal proceedings as contained in the International Covenant on Civil and Political Rights, article 14.

g) If the judgement of the requesting State has been rendered *in absentia*, the convicted person has not had sufficient notice of the trial nor opportunity to arrange for a defence and has not or will not have the opportunity to have the case retried.

ARTICLE 4

Optional grounds for refusal

Extradition may be refused in any of the following circumstances:

a) If the person whose extradition is requested is a national of the requested State;

b) If the competent authorities of the requested State have decided either not to institute or to terminate proceedings against the person for the offence for which extradition is requested;

c) If prosecution in the requested State is pending for the same offence;

d) If the offence carries the death penalty under the law of the requesting State;

e) If the offence has been committed outside the territory of either Party and the law of the requested State does not provide for jurisdiction over such an offence committed outside its territory;

f) If the offence is regarded under the law of the requested State as having been committed in whole or in part within that State;

g) If the person whose extradition has been requested has been sentenced or would be liable to be tried in the requesting State by an extraordinary or *ad hoc* court or tribunal;

h) If extradition would be incompatible with humanitarian considerations in view of age, health or other personal circumstances of that person.

ARTICLE 5

Channels of communication and required documents

1. A request for extradition shall be made in writing and transmitted, along with supporting documents, through diplomatic channels directly between the ministries of justice or other designated authorities.

2. A request shall be accompanied by the following:

- a) In all cases,
 - i) As accurate a description as possible of the person sought and information to help establish that person's identity, nationality and location;
 - ii) The text of the relevant provision of the law creating the offence and a statement of the penalty that can be imposed;
- b) If a warrant for arrest has been issued, by a certified copy of that warrant, a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the alleged offence;
- c) If the person has been convicted, by a statement of the offence and a description of the acts or omissions constituting the offence and by the original or certified copy of the judgement;
- d) If the person has been convicted in his or her absence, in addition to the documents set out in paragraph 2 c), by a statement as to the legal means available to the person to prepare a defence or have the case retried;
- e) If the person has been convicted but no sentence imposed, by a statement of the offence, a document setting out the conviction and a statement affirming intent to impose a sentence.

3. The documents shall be accompanied by a translation into the language of the requested State or another language acceptable to that State.

ARTICLE 6

Simplified extradition procedure

The requested State may grant extradition after receipt of a request for provisional arrest, provided that the person sought explicitly consents before a competent authority.

ARTICLE 7

Certification and authentication

Except as provided by this Treaty, a request for extradition and the supporting documents thereto shall not require certification or authentication.

ARTICLE 8

Additional information

If the requested State considers that the information provided in a request for extradition is not sufficient, it may request additional information to be furnished within such reasonable time as it specifies.

ARTICLE 9

Provisional arrest

1. In case of urgency, the requesting State may apply for the provisional arrest of the person sought pending presentation of the request for extradition.
2. The application for provisional arrest shall contain a description of the person sought, a statement of the existence of one of the documents mentioned in paragraph 2 of article 5, a statement of the punishment that has or can be imposed and a concise statement of the facts of the case and the location, where known, of the person.
3. The requested State shall decide on the application and communicate its decision without delay.
4. The person arrested shall be set at liberty upon the expiration of [40] days if a request for extradition supported by the relevant documents has not been received.
5. Such release shall not prevent rearrest and institution of extradition proceedings if the request is subsequently received.

ARTICLE 10

Decision on the request

1. The requested State shall promptly communicate its decision on the request for extradition to the requesting State.

2. Reasons shall be given for any complete or partial refusal of the request.

ARTICLE 11

Surrender of the person

1. Upon being informed that extradition has been granted, the Parties shall without undue delay arrange for the surrender of the person sought and the requested State shall inform the requesting State of the length of time for which the person was detained with a view to surrender.
2. The person shall be removed from the territory of the requested State within such reasonable time as the requested State specifies and, if the person is not removed by then, the requested State may release the person and may refuse extradition for the same offence.
3. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify the other Party and a new date of surrender will be agreed upon.

ARTICLE 12

Postponed or conditional surrender

1. The requested State may postpone the surrender of a person sought in order to proceed against that person or enforce a sentence imposed for an offence other than that for which extradition is sought.
2. The requested State may, instead of postponing surrender, temporarily surrender the person sought to the requesting State in accord with conditions determined between the Parties.

ARTICLE 13

Surrender of property

1. To the extent permitted under the law of the requested State and subject to the rights of third parties, all property found in the re-

quested State that has been acquired as a result of the offence or that may be required as evidence shall, upon request, be surrendered if extradition is granted.

2. Said property may, on request, be surrendered to the requesting State even if the extradition having been agreed to cannot be carried out.

3. When said property is liable to seizure or confiscation in the requested State, it may retain it or temporarily hand it over.

4. Where the law of the requested State or protection of the rights of third parties so require, any property so surrendered shall be returned to the requested State free of charge after completion of proceedings, if that State so requests.

ARTICLE 14

Rule of speciality

1. A person extradited under this Treaty shall not be proceeded against, sentenced, detained, re-extradited to a third State, or subjected to any other restriction of personal liberty in the territory of the requesting State for any offence committed before surrender other than:

- a) An offence for which extradition was granted;
- b) Any other offence in respect of which the requested State consents.

2. A request for the consent of the requested State under this article shall be accompanied by the documents mentioned in paragraph 2 of article 5 and a legal record of any statement made by the extradited person with respect to the offence.

3. Paragraph 1 of this article shall not apply if the person has had an opportunity to leave the requesting State and has not done so within [30/45] days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the requesting State after leaving it.

ARTICLE 15

Transit

1. Where a person is to be extradited to a Party from a third State through the territory of the other Party, the Party to which the person is to be extradited shall request the other Party to permit transit through its territory.
2. The requested State shall grant such a request expeditiously unless its essential interests would be prejudiced thereby.
3. The State of transit shall ensure legal provisions enabling the person to be held in custody during transit.
4. In the event of an unscheduled landing, the Party to be requested to permit transit may, at the request of the escorting officer, hold the person in custody for [48 hours] pending receipt of the transit request.

ARTICLE 16

Concurrent requests

If a party receives requests for extradition for the same person from both the other Party and a third State it shall, at its discretion, determine to which of those States the person is to be extradited.

ARTICLE 17

Costs

1. The requested State shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition.
2. The requested State shall also bear the costs incurred in its territory with the seizure and handing over of property or the arrest and detention of the person sought.
3. The requesting State shall bear the costs incurred in conveying the person from the territory of the requested State, including transit costs.

ARTICLE 18

Final provisions

1. This Treaty is subject to (ratification, acceptance or approval).
2. This Treaty shall enter into force on the thirtieth day after the day on which the instruments of (ratification, acceptance or approval) are exchanged.
3. This Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.
4. Either Party may denounce this Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which notice is received by the other Party.

MODEL TREATY ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

*Adopted by the General Assembly as resolution 45/116
on the recommendation of the Eighth Congress*

ARTICLE 1

Scope of application

1. The Parties shall afford to each other the widest possible measure of mutual assistance in investigations or court proceedings in respect of offences the punishment of which at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the Requesting State.
2. Mutual assistance to be afforded in accord with this Treaty may include:
 - a) Taking evidence or statements from persons;
 - b) Assisting in the availability of detained persons or others to give evidence or assist in investigations;
 - c) Effecting service of judicial documents;
 - d) Executing searches and seizures;
 - e) Examining objects and sites;
 - f) Providing information and evidentiary items;
 - g) Providing relevant documents and records.
3. This Treaty does not apply to:

- a) The arrest or detention of any person with a view to extradition;
- b) The enforcement of criminal judgements imposed in the Requesting State except as permitted by law in the Requested State;
- c) The transfer of persons in custody to serve sentences;
- d) The transfer of proceedings in criminal matters.

ARTICLE 2

Other arrangements

Unless the Parties decide otherwise, this Treaty shall not affect obligations subsisting between them.

ARTICLE 3

Designation of competent authorities

Each Party shall designate and indicate to the other Party an authority or authorities through which requests for the purposes of this Treaty should be made.

ARTICLE 4

Refusal of assistance

Assistance may be refused if:

- a) The Requested State is of the opinion that the request, if granted, would prejudice its sovereignty, security, public order or other essential public interests;
- b) The offence is regarded as being of a political nature;
- c) There are grounds to believe the request has been made for the purpose of prosecuting a person on account of race, sex, religion, nationality, ethnic origin or political opinions or that person's position may be prejudiced for any of those reasons;
- d) The request relates to an offence subject to investigation or prosecution in the Requested State or which would be incompatible with this State's law on double jeopardy;
- e) The Requested State is required to carry out compulsory measures inconsistent with its law and practice;

f) The act is an offence under military law, and not also an offence under ordinary criminal law.

4. Before refusing a request, the Requested State shall consider whether assistance may be granted subject to certain conditions. If the Requesting State accepts assistance under these conditions, it shall comply with them.

5. Reasons shall be given for any refusal or postponement of mutual assistance.

ARTICLE 5

Contents of requests

1. Requests for assistance shall include:

- a) The name of the requesting office and the competent authority conducting the investigation or court proceedings;
- b) The purpose of the request and a brief description of the assistance sought;
- c) A description of the facts alleged to constitute the offence and a statement of the relevant laws;
- d) The name and address of the person to be served, where necessary;
- e) The reasons for and details of any procedure or requirement that the Requesting State wishes to be followed;
- f) Specification of any time-limit to be complied with;
- g) Other necessary information.

2. Requests and supporting documents shall be accompanied by a translation into the language of the Requested State or another language acceptable to that State.

3. The Requested State may request additional information.

ARTICLE 6

Execution of requests

Requests for assistance shall be carried out promptly. To the extent consistent with the law of the Requested State, it shall carry out the request in the manner specified by the Requesting State.

ARTICLE 7

Return of material to the Requested State

Any property, records or documents handed over to the Requesting State shall be returned as soon as possible unless right of return is waived.

ARTICLE 8

Limitation on use

The Requesting State shall not use information provided for proceedings other than those stated in the request.

ARTICLE 9

Protection of confidentiality

Upon request:

- a) The Requested State shall endeavour to keep confidential the request for assistance and its contents;
- b) The Requesting State shall keep confidential evidence and information provided, except as needed for investigation and proceedings described in the request.

ARTICLE 10

Service of documents

1. The Requested State shall effect service of documents that are transmitted to it.
2. A request to effect service of summonses shall be made not less than . . . days before the date on which the appearance of a person is required. In urgent cases, the time requirement may be waived.

ARTICLE 11

Obtaining evidence

1. The Requested State shall take sworn or affirmed testimony for transmission to the Requesting State.
2. Upon request, the parties to the relevant proceedings in the Requesting State, their legal representatives and representatives of the Requesting State may be present at these proceedings.

ARTICLE 12

Right or obligation to decline to give evidence

1. A person required to give evidence may decline to do so where either:
 - a) The law of the Requested State permits or requires that person to decline to give evidence in similar circumstances; or
 - b) The law of the Requesting State permits or requires that person to decline to give evidence in similar circumstances.
2. If a person claims a right or obligation to decline to give evidence under the law of the other State, a certificate of the competent authority of that other State as to the existence or non-existence of that right or obligation shall be relied on.

ARTICLE 13

Availability of persons in custody to give evidence or to assist in investigations

1. Upon request, and if the Requested State agrees and its law permits, a person in custody may, subject to his or her consent, be temporarily transferred to the Requesting State to give evidence or assist in the investigations.
2. The Requesting State shall hold that person in custody and shall return him or her at the conclusion of the matter under investigation or at such earlier time as that person's presence is no longer required.

3. Where the Requested State advises the Requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty.

ARTICLE 14

Availability of other persons to give evidence or assist in investigations

1. The Requesting State may request the assistance of the Requested State in inviting a person:
 - a) To appear in proceedings in relation to a criminal matter, unless that person is the person charged; or
 - b) To assist in the investigations in relation to a criminal matter.
2. The Requested State shall invite the person to appear as a witness or expert in proceedings or to assist in investigations.
3. The request or the summons shall indicate the approximate allowances and the travel and subsistence expenses payable by the Requesting State.
4. Upon request, the Requested State may grant the person an advance, to be refunded by the Requesting State.

ARTICLE 15

Safe conduct

1. Where a person is in the Requesting State pursuant to a request for assistance:
 - a) That person shall not be detained, prosecuted, punished or subjected to any other restrictions of personal liberty in respect of any acts or omissions that preceded the person's departure from the Requested State;
 - b) That person shall not, without that person's consent, be required to give evidence or assist in any other investigation or proceeding other than that which the request relates to.
2. Paragraph 1 of this article shall cease to apply if that person, being free to leave, has not left the Requesting State within a period of [15] consecutive days after having been officially notified that his or her presence is no longer required or, having left, has voluntarily returned.

3. A person who does not consent to a request pursuant to article 13 or accept an invitation pursuant to article 14 shall not, by reason thereof, be liable to any penalty or subjected to any coercive measure.

ARTICLE 16

Provision of publicly available documents and other records

1. The Requested State shall provide copies of documents and records in so far as they are open to public access as part of a public register.

2. The Requested State may provide copies of any other document or record under the same conditions as they would be provided to its own law enforcement and judicial authorities.

ARTICLE 17

Search and seizure

The Requested State shall, in so far as its law permits, carry out requests for search and seizure and delivery of any material to the Requesting State for evidentiary purposes, provided that the rights of *bona fide* third parties are protected.

ARTICLE 18

Certification and authentication

A request for assistance shall not require certification or authentication.

ARTICLE 19

Costs

The ordinary costs of executing a request shall be borne by the Requested State, unless otherwise determined. The Parties shall consult in advance to determine the terms and conditions under which costs of a substantial or extraordinary nature will be borne.

ARTICLE 20

Consultation

The Parties shall consult promptly, at the request of either, concerning the interpretation and application of this Treaty.

ARTICLE 21

Final provisions

1. This Treaty is subject to (ratification, acceptance or approval).
2. This Treaty shall enter into force on the thirtieth day after the instruments of (ratification, acceptance or approval) are exchanged.
3. This Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.
4. Either Party may denounce this Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which notice is received by the other Party.

MODEL TREATY ON THE TRANSFER OF PROCEEDINGS IN CRIMINAL MATTERS

*Adopted by the General Assembly as resolution 45/118
on the recommendation of the Eighth Congress*

ARTICLE I

Scope of application

1. When a person is suspected of having committed an offence under the law of a State which is a Contracting Party, the State may request another State which is a Contracting Party to take proceedings in respect of this offence.
2. The Contracting Parties shall take necessary legislative measures to ensure the necessary jurisdictions upon a request to take proceedings.

ARTICLE 2

Channels of communications

A request to take proceedings shall be made in writing. The request, supporting documents and subsequent communications shall be transmitted through diplomatic channels, directly between the ministries of justice or any other designated authorities.

ARTICLE 3

Required documents

1. The request shall contain or be accompanied by the following information:

- a) The authority presenting the request;
- b) A description of the act for which transfer of proceedings is being requested, including time and place of the offence;
- c) A statement on the results of investigations substantiating suspicion of an offence;
- d) The legal provisions by which the act is considered an offence;
- e) A statement on the identity, nationality and residence of the suspected person.

2. The documents shall be accompanied by a translation into the language of the Requested State or into another language acceptable to that State.

ARTICLE 4

Certification and authentication

A request to take proceedings shall not require certification or authentication.

ARTICLE 5

Decision on the request

The competent authorities of the Requested State shall examine what action to take on the request and shall promptly communicate their decision.

ARTICLE 6

Dual criminality

A request to take proceedings can be complied with only if the act on which the request is based would be an offence if committed in the territory of the Requested State.

ARTICLE 7

Grounds for refusal

The Requested State shall communicate reasons for refusal of a request to take proceedings. Acceptance may be refused if:

- a) The suspected person is not a national of or ordinary resident in the Requested State;
- b) The act is an offence under military law, and not also an offence under ordinary criminal law;
- c) The offence is in connection with taxes, duties, customs or exchange;
- d) The offence is regarded by the Requested State as being of a political nature.

ARTICLE 8

The position of the suspected person

1. The suspected person may express to either State his or her interest in the transfer of the proceedings. Such interest may also be expressed by the legal representative or close relatives of the suspected person.

2. Before a request for transfer of proceedings is made, the Requesting State shall, if practicable, allow the suspected person to present his or her views on the alleged offence and the intended transfer.

ARTICLE 9

The rights of the victim

The rights of the victim of the offence, in particular his or her right to restitution or compensation, are not to be affected as a result

of the transfer. If a settlement of the victim's claim has not been reached before the transfer, the Requested State shall permit representation of the claim in the transferred proceedings, if its law provides for such a possibility. In the event of the death of the victim, these provisions shall apply to his or her dependants accordingly.

ARTICLE 10

Effects of the transfer of proceedings on the Requesting State

Upon acceptance by the Requested State of the request to take proceedings against the suspected person, the Requesting State shall provisionally discontinue prosecution, except necessary investigation, including judicial assistance to the Requested State, until informed that the case has finally been disposed of. From that date on, the Requesting State shall definitely refrain from further prosecution of the same offence.

ARTICLE 11

Effects of the transfer of proceedings on the Requested State

1. The proceedings shall be governed by the law of the Requested State. When charging the suspected person under its law, the Requested State shall make the necessary adjustment with respect to particular elements in the legal description of the offence.
2. As far as compatible with the law of the Requested State, any act performed in the Requesting State shall have the same validity in the Requested State.
3. The Requested State shall inform the Requesting State of the decision taken as a result of the proceedings.

ARTICLE 12

Provisional measures

When the Requesting State requests transfer of proceedings, the Requested State may apply all provisional measures, including provisional detention and seizure, as could be applied under its own law if the offence had been committed in its territory.

ARTICLE 13

The plurality of criminal proceedings

When criminal proceedings are pending in two or more States against the same suspected person for the same offence, the States shall conduct consultations to decide which of them should continue the proceedings.

ARTICLE 14

Costs

Any costs incurred by a Contracting Party because of a transfer of proceedings shall not be refunded, unless otherwise agreed by both the Requesting and Requested States.

ARTICLE 15

Final provisions

1. This Treaty is subject to (ratification, acceptance or approval).
2. This Treaty shall enter into force on the thirtieth day after the instruments of ratification are exchanged.
3. This Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.
4. Either Contracting Party may denounce this Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which notice is received by the other Party.

MODEL TREATY ON THE TRANSFER OF SUPERVISION OF OFFENDERS CONDITIONALLY SENTENCED OR CONDITIONALLY RELEASED

Adopted by the General Assembly as resolution 45/118
on the recommendation of the Eighth Congress

ARTICLE 1

Scope of application

1. This Treaty shall be applicable if, according to a final court decision, a person has been found guilty of an offence and has been:

- a) Placed on probation without sentence having been pronounced;
- b) Given a suspended sentence involving deprivation of liberty;
- c) Given a sentence which has been modified by parole or conditionally suspended.

2. The State where the decision was taken (sentencing State) may request another State (administering State) to take responsibility for applying the terms of the decision (transfer of supervision).

ARTICLE 2

Channels of communications

A request for the transfer of supervision shall be made in writing. The request, supporting documents and subsequent communications shall be transmitted through diplomatic channels, directly between the ministries of justice or any other designated authorities.

ARTICLE 3

Required documents

1. A request for the transfer of supervision shall contain all necessary information on identity, nationality and residence of the sentenced person and be accompanied by any court decision referred to in the preceding provision and a certificate that this decision is final.

2. The documents shall be accompanied by a translation into the language of the requested State or into another language acceptable to that State.

ARTICLE 4

Certification and authentication

A request for the transfer of supervision shall not require certification or authentication.

ARTICLE 5

Decision on the request

The competent authorities of the Requested State shall examine what action to take on the request and shall promptly communicate their decision.

ARTICLE 6

Dual criminality

A request for the transfer of supervision can be complied with only if the act on which the request is based would be an offence if committed in the territory of the administering State.

ARTICLE 7

Grounds for refusal

If the administering State refuses acceptance of a request, it shall communicate the reasons for refusal. Acceptance may be refused where:

- a) The sentenced person is not an ordinary resident in the administering State;
- b) The act is an offence under military law, and is not also an offence under ordinary criminal law;
- c) The offence is in connection with taxes, duties, customs or exchange;
- d) The offence is regarded by the administering State as being of a political nature;
- e) The administering State, under its own law, can no longer carry out the supervision or enforce the sanction because of lapse of time.

ARTICLE 8

The position of the sentenced person

Whether sentenced or standing trial, the sentenced person may express to the sentencing State his or her interest in a transfer of supervision and his or her willingness to fulfil any conditions to be imposed. Such interest may also be expressed by his or her legal representative or close relatives.

ARTICLE 9

The rights of the victim

The rights of the victim of the offence, in particular his or her right to restitution or compensation, are not to be affected as a result of the transfer. In the event of the death of the victim, this provision shall apply to his or her dependants accordingly.

ARTICLE 10

The effect of the transfer of supervision on the sentencing State

The acceptance by the administering State of responsibility for applying the terms of the decision shall extinguish the competence of the sentencing State to enforce the sentence.

ARTICLE 11

The effects of the transfer of supervision on the administering State

1. The supervision transferred upon agreement and the subsequent procedure shall be carried out in accord with the law of the administering State. That State alone shall have the right of revocation. That State may adapt to its own law the conditions or measures prescribed, providing they are not more severe than those pronounced in the sentencing State.
2. If the administering State revokes the conditional sentence or conditional release, it shall enforce the sentence in accord with its own law without, however, going beyond the limits imposed by the sentencing State.

ARTICLE 12

Review, pardon and amnesty

1. The sentencing State alone shall have the right to decide on any application to reopen the case.
2. Each Party may grant pardon, amnesty or commutation of the sentence.

ARTICLE 13

Information

1. The Contracting Parties shall keep each other informed, as necessary, of circumstances likely to affect supervision or enforcement in the administering State.
2. After expiration of the period of supervision, the administering State shall provide to the sentencing State, at its request, a final report on the supervised person's conduct and compliance with the measures imposed.

ARTICLE 14

Costs

Supervision and enforcement costs incurred in the administering State shall not be refunded, unless otherwise agreed by both the sentencing State and the administering State.

ARTICLE 15

Final provisions

1. This Treaty is subject to (ratification, acceptance or approval).
2. This Treaty shall enter into force on the thirtieth day after the instruments of (ratification, acceptance or approval) are exchanged.
3. This Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.
4. Either Party may denounce this Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which notice is received by the other Party.

**MODEL TREATY FOR THE PREVENTION OF CRIMES
THAT INFRINGE ON THE CULTURAL HERITAGE OF PEOPLES
IN THE FORM OF MOVABLE PROPERTY**

Adopted by the Eighth Crime Congress and welcomed
by the General Assembly in resolution 45/121

ARTICLE 1

Scope of application and definition

1. For the purposes of this Treaty, movable cultural property shall be understood as referring to property which, on religious or secular grounds, is specifically designated by a State Party as being subject to export control by reason of its importance for archaeology, prehistory, history, literature, art or science, and as belonging to one or more of the following categories:

- a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest;
- b) Property relating to history, including the history of science and technology, military history, and the history of societies and religions, as well as to the lives of leaders, thinkers, scientists and artists, and to events of national importance;
- c) Products of archaeological excavations or discoveries, including clandestine excavations or discoveries, whether on land or under water;
- d) Elements of artistic or historical monuments or archaeological sites which have been dismantled;
- e) Antiquities, including tools, ceramics, ornaments, musical instruments, pottery, inscriptions, coins, engraved seals, jewels, weapons and funerary remains;
- f) Materials of anthropological, historical or ethnological interest;
- g) Property of artistic interest, including paintings, statues, prints and assemblages;
- h) Rare manuscripts and incunabula, old books, documents and publications of special interest;
- i) Postage and revenue stamps;
- j) Phonographic, photographic and cinematographic archives;
- k) Articles of furniture and musical instruments of more than 100 years of age.

2. This Treaty applies to movable cultural property stolen in or illicitly exported from the other State Party after the coming into force of the Treaty.

ARTICLE 2

General principles

1. Each State Party undertakes:

- a) To take necessary measures to prohibit the import and export of movable cultural property (i) which has been stolen in the other State Party or (ii) which has been illicitly exported from the other State Party;
- b) To take the necessary measures to prohibit the acquisition of, and dealing within its territory with, movable cultural property which has been imported contrary to the above prohibitions;
- c) To legislate to prevent persons and institutions within its territory from entering into international conspiracies with respect to movable cultural property;
- d) To provide information concerning stolen movable cultural property to an international data base agreed upon between the States Parties;
- e) To take measures to ensure that the purchaser of stolen movable cultural property which is listed on the international data base is not considered to have purchased such property in good faith;
- f) To introduce a system whereby the export of movable cultural property is authorized by issue of an export certificate;
- g) To use all means, including the fostering of public awareness, to combat illicit import and export, theft, illicit excavations and illicit dealing in movable cultural property.

2. Each State undertakes to take the necessary measures to recover and return, at the request of the other State Party, any movable cultural property which is covered in subparagraph a) above.

ARTICLE 3

Sanctions

Each State Party undertakes to impose sanctions upon:

- a) Persons or institutions responsible for illicit import or export of movable cultural property;
- b) Persons or institutions that knowingly acquire or deal in stolen or illicitly imported movable cultural property;
- c) Persons or institutions that enter into international conspiracies to obtain, export or import movable cultural property by illicit means.

ARTICLE 4

Procedures

1. Requests for recovery and return shall be made through diplomatic channels.
2. All expenses incidental to the return and delivery of the movable cultural property shall be borne by the requesting State Party, and no persons or institution shall be entitled to claim any form of compensation from the State Party returning the property claimed. Neither shall the requesting State Party be required to compensate in any way such persons or institutions as may have participated in illegally sending abroad the property in question, although it must pay fair compensation to any person or institution that in good faith acquired or was in legal possession of the property.
3. Both parties agree not to levy any customs or other duties on such movable property as may be discovered and returned in accord with the present Treaty.
4. The State Parties agree to make available to each other information to assist in combating crimes against movable cultural property.
5. Each State Party shall provide information concerning laws which protect its movable cultural property to an international data base agreed upon between the States Parties.

ARTICLE 5

Final provisions

1. This Treaty is subject to (ratification, acceptance or approval).
2. This Treaty shall enter into force on the thirtieth day after the instruments of (ratification, acceptance or approval) are exchanged.

3. Either State Party may denounce this Treaty by giving notice in writing to the other State Party. Such denunciation shall take effect six months following the date on which notice is received by the other State Party.

4. This treaty is intended to be complementary to, and does not in any way exclude, participation in other international arrangements.

ANNEX TO RESOLUTION ON MEASURES AGAINST INTERNATIONAL TERRORISM

Approved by the Eighth Congress

Definition

It would be useful to identify behaviour that the international community regards as unacceptable and that requires the application of effective preventive and repressive measures consistent with international law, although to date the international community has been unable to arrive at a universally agreed meaning of what is included in the term "international terrorism".

Identification of the problems

Existing international norms may not be sufficient to control terrorist violence. Among the issues of concern are: State policies and practices that may be considered a violation of international treaty obligations; the absence of specific norms on State responsibility to carry out international obligations; abuse of diplomatic immunity; the absence of norms concerning acts of States not prohibited by international law; the absence of international regulation and control of traffic in arms; the inadequacy of international mechanisms for the peaceful resolution of conflicts and protection of human rights; the lack of universal acceptance of the principle of *aut dedere aut iudicare*; and the shortcoming of international cooperation in preventing and controlling terrorist violence.

International cooperation for the effective and uniform prevention and control of terrorism

Effective measures to be developed include: cooperation between law enforcement agencies, prosecutors and the judiciary; integration of the various agencies responsible for law enforcement and criminal justice; inter-State cooperation in penal matters; education and training of law enforcement personnel; and educational and public awareness programmes through the mass media.

Jurisdiction

Greater uniformity in the laws and practices of States concerning criminal jurisdiction should be encouraged, while over-extension of national jurisdiction is avoided to prevent legal conflicts between States. Jurisdictional priorities should give territoriality the first priority.

Extradition

States should develop and implement effective international extradition treaties. The political offence exception should not be a bar to extradition for crimes of terrorist violence, except when the requested State submits the case to its competent authorities for prosecution or transfers the case to another State for prosecution.

Mutual assistance and cooperation

Prevention and control of terrorist violence depends on mutual cooperation between States in securing evidence for prosecution or extradition of the offenders. States should also lend each other assistance in penal matters.

Non-applicability of defence

Defence based on obedience to superior orders or acts of State should not apply with respect to persons who have violated international conventions against terrorist violence.

Conduct of States

Terrorist violence supported, carried out or acquiesced to by States should be more effectively curbed by the international community,

and the United Nations should develop mechanisms for the control of such conduct.

Targets of vulnerability

The feasibility of an international convention to protect targets that are particularly vulnerable, the destruction of which would cause great harm to populations or society, such as hydroelectric or nuclear facilities, should be studied.

Control of weapons, ammunition and explosives

States should develop national legislation for the control of weapons, ammunition and explosives that may be used for terrorist purposes. International regulations on the transfer, import, export and storage of such should be harmonized.

Protection of the judiciary and of criminal justice personnel

States should adopt measures to protect the judiciary, criminal justice personnel, jurors and lawyers involved in trials of terrorism cases.

Protection of victims

States should establish measures for the protection, assistance and relief of victims of terrorism.

Protection of witnesses

States should adopt measures to protect witnesses of terrorist acts.

Treatment of offenders

States should diminish existing disparities in the sentencing of terrorist offenders. Persons charged with or convicted of terrorist offences must be treated without discrimination and in accord with internationally recognized human rights standards.

Role of the mass media

States and the mass media should consider guidelines to control the following: sensationalizing and justifying terrorist violence; disseminating strategic information on potential targets; and disseminating tactical information while terrorist acts are taking place. These guidelines are in no way intended to restrict the basic human

right of freedom of speech or to encourage interference in the domestic affairs of other States.

Codification of international criminal law and creation of an international criminal court

The International Law Commission should be encouraged to continue to explore the possibility of an international criminal court or some other international mechanism to have jurisdiction over persons who have committed offences, including those connected with terrorism or illicit trafficking in drugs. States could also explore the possibility of separate international criminal courts of regional or subregional jurisdiction in which grave international crimes could be brought to trial and the incorporation of such courts within the United Nations system.

Enhancing the effectiveness of international cooperation

States that are signatories to international conventions prohibiting terrorist violence are urged to ratify those conventions and enforce their provisions, and States that are not signatories are urged to ratify and enforce those conventions. The central role of the United Nations, its Crime Prevention and Criminal Justice Branch and the Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna should be strengthened in order to preserve peace, strengthen the world order and fight against crime under the rule of law.

The full text of International Standards, Guidelines, Model Treaties and other instruments regarding the prevention and control of crime can be obtained from:

Crime Prevention and Criminal Justice Branch
Centre for Social Development and Humanitarian Affairs
Vienna International Centre
P.O. Box 500
A-1400 Vienna, Austria

